

# The Burger Court Opinion Writing Database

## *Hancock v. Train*

426 U.S. 167 (1976)

Paul J. Wahlbeck, George Washington University  
James F. Spriggs, II, Washington University in St. Louis  
Forrest Maltzman, George Washington University



✓  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

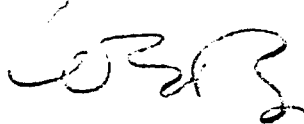
May 24, 1976

Re: No. 74-220 - Hancock v. Train

Dear Byron:

I join your proposed opinion dated May 19.

Regards,



Mr. Justice White

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

May 17, 1976

RE: No. 74-220 Hancock v. Train

Dear Byron:

I agree.

Sincerely,



Mr. Justice White

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE POTTER STEWART

May 17, 1976

Re: No. 74-220, Hancock v. Train

Dear Byron,

I should appreciate your adding the following at  
the foot of your opinion for the Court in this case:

MR. JUSTICE STEWART dissents. He agrees  
substantially with the reasoning of the Court of  
Appeals for the Fifth Circuit in Alabama v.  
Seeber, 502 F.2d 1238, and he would reverse  
the judgment before us on the grounds set out  
in that opinion.

Sincerely yours,

P.S.  
/

Mr. Justice White

Copies to the Conference

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice White

Circulated: 5-14-

Recirculated: \_\_\_\_\_

2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 74-220

Ed W. Hancock, Attorney  
General of Kentucky,  
Petitioner,  
v.  
Russell E. Train, Administrator,  
Environmental Protection Agency,  
et al.

On Writ of Certiorari to the  
United States Court of  
Appeals for the Sixth Circuit.

[May —, 1976]

MR. JUSTICE WHITE delivered the opinion of the Court.

The question for decision in this case is whether a State whose federally approved implementation plan forbids an air contaminant source to operate without a state permit may require existing federally owned or operated installations to secure such a permit. The case presents an issue of statutory construction requiring examination of the Clean Air Act, as amended, 42 U. S. C. § 1857 *et seq.*, and its legislative history in light of established constitutional principles governing the determination of whether and the extent to which federal installations have been subjected to state regulation.<sup>1</sup> The specific question is whether obtaining a permit to operate is among those "requirements respecting control and

<sup>1</sup> In *EPA v. California ex rel. State Water Resources Control Board*, *post*, decided this day, we consider a closely related issue under the Federal Water Pollution Control Act, as amended, 33 U. S. C. § 1251 *et seq.* (Supp. IV).

✓  
STYLISTIC CHANGES THROUGHOUT.

SEE PAGES: 12, 15, 20, 24-25, 32-33

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice Marshall  
Mr. Justice Black  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice White

Circulated: \_\_\_\_\_

Recirculated: 5-19- \_\_\_\_\_

3rd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 74-220

Ed W. Hancock, Attorney  
General of Kentucky,  
Petitioner,

v.

Russell E. Train, Adminis-  
trator, Environmental  
Protection Agency,  
et al.

On Writ of Certiorari to the  
United States Court of  
Appeals for the Sixth Cir-  
cuit.

[May —, 1976]

MR. JUSTICE WHITE delivered the opinion of the Court.

The question for decision in this case is whether a State whose federally approved implementation plan forbids an air contaminant source to operate without a state permit may require existing federally owned or operated installations to secure such a permit. The case presents an issue of statutory construction requiring examination of the Clean Air Act, as amended, 42 U. S. C. § 1857 *et seq.*, and its legislative history in light of established constitutional principles governing the determination of whether and the extent to which federal installations have been subjected to state regulation.<sup>1</sup> The specific question is whether obtaining a permit to operate is among those "requirements respecting control and

<sup>1</sup> In *EPA v. State Water Resources Control Board*, *post*, decided this day, we consider a closely related issue under the Federal Water Pollution Control Act, as amended, 33 U. S. C. § 1251 *et seq.* (Supp. IV).

✓  
STYLISTIC CHANGES THROUGHOUT.

SEE PAGES: 32 - 33

16. The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
✓ Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice White

Circulated: \_\_\_\_\_

Recirculated: 6-3-7

4th DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 74-220

Ed W. Hancock, Attorney  
General of Kentucky,  
Petitioner,  
v.  
Russell E. Train, Adminis-  
trator, Environmental  
Protection Agency,  
et al.

On Writ of Certiorari to the  
United States Court of  
Appeals for the Sixth Cir-  
cuit.

[June 7, 1976]

MR. JUSTICE WHITE delivered the opinion of the Court.

The question for decision in this case is whether a State whose federally approved implementation plan forbids an air contaminant source to operate without a state permit may require existing federally owned or operated installations to secure such a permit. The case presents an issue of statutory construction requiring examination of the Clean Air Act, as amended, 42 U. S. C. § 1857 *et seq.*, and its legislative history in light of established constitutional principles governing the determination of whether and the extent to which federal installations have been subjected to state regulation.<sup>1</sup> The specific question is whether obtaining a permit to operate is among these requirements respecting control and

<sup>1</sup> In *EPA v. State Water Resources Control Board*, post, decided this day, we consider a closely related issue under the Federal Water Pollution Control Act, as amended, 33 U. S. C. § 1251 *et seq.* (Supp. IV).

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE BYRON R. WHITE

June 7, 1976

MEMORANDUM TO THE CONFERENCE

Re: Cases held for Hancock v. Train — No. 74-220

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There is one case held for Hancock:

Seeber v. Alabama, No. 74-851 (CA 5: Godbold,  
Ingraham; Simpson, dissenting).

Like Kentucky, Alabama adopted and the EPA approved an air pollution control implementation plan which included a rule requiring all operators of air pollutant sources to secure written permits. Petitioners Tennessee Valley Authority and Redstone Arsenal (U.S. Army) supplied the information Alabama required and took abatement measures, but declined to apply for permits. Respondents Alabama and its Air Pollution Control Commission sued in District Court (ND Ala.) for declaratory and injunctive relief to require petitioners to apply for and obtain permits. EPA was not a defendant. The District Court dismissed the complaint on cross-motions for summary judgment.

CA 5 reversed, one judge dissenting, and held that § 118 of the Clean Air Act clearly subjects federal facilities to the Alabama permit requirements and that those requirements may be enforced against the United States in district court. The court expressly rejected CA-6's reasoning and result in Hancock v. Train.

Hancock v. Train, which we have affirmed, governs this case. I will vote to grant and to vacate and remand this case in light of Hancock.

Sincerely,





Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

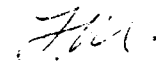
May 14, 1976

Re: No. 74-220 -- Ed W. Hancock v. Russell E. Train

Dear Byron:

Please join me.

Sincerely,



T. M.

Mr. Justice White

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

May 24, 1976

Re: No. 74-220 - Hancock v. Train

Dear Byron:

Please join me in your opinion.

Sincerely,

A handwritten signature in cursive script, appearing to read "Harry", followed by a horizontal line.

Mr. Justice White

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

May 18, 1976

No. 74-220 Hancock v. Train  
No. 74-1435 EPA v. California ex rel State Water  
Resources Control Board

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Dear Byron:

I voted the "other way" in both of the above cases, but stated at Conference that I would not dissent from a Court opinion in either.

I think your opinions deal very well indeed with an opaque issue of statutory construction. I will join a Court opinion.

Sincerely,

*L. F. Powell*

Mr. Justice White

lfp/ss

cc: The Conference

✓

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST


May 18, 1976

Re: No. 74-220 - Hancock v. Train

Dear Byron:

Would you please include me, if agreeable with Potter, as joining his dissenting statement at the foot of your opinion for the Court in this case?

Sincerely,



Mr. Justice White

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

May 17, 1976

Re: 74-220 - Ed W. Hancock v. Russell E. Train

Dear Byron:

Please join me.

Sincerely,

A handwritten signature in dark ink, appearing to be 'JP Stevens', written in a cursive style.

Mr. Justice White

Copies to the Conference